In the High Court of Punjab and Haryana at Chandigarh.

Civil Revision No.6024 of 2002.

Date of decision:8./12.2006.

Sat Pal.

...Petitioner.

Versus

Om Parkash.

...Respondent.

...

Coram: Hon'ble Mr. Justie S. N. Aggarwal.

...

Present: Mr.M.L.Sarin, Senior Advocate with Mr.D.B.Singh, Advocate for the petitioner.

Mr.Akshay Bhan Advocate for the respondent.

...

Judgment.

S. N. Aggarwal, J.

Om Parkash respondent filed an ejectment petition (RA 40 of 2001) under Section 13-B of the East Punjab Urban Rent Restriction Act,1949 (in short Rent Act) against the petitioner relating to the residential building. The same was accepted by the learned Rent Controller vide order dated 11.11.2002 against which Civil Revision No.6024 of 2002 has been filed by the petitioner. Similarly, Om Parkash, respondent filed another ejectment petition (RA 41 of 2001)

against the petitioner under the same provisions of Rent Act relating to non residential building. It was also accepted by the learned Rent Controller against which the tenant-petitioner had filed Civil Revision No.6025 of 2002. The questions of law and fact involved in both these revision petitions are the same and,therefore, both are being taken up for decision together. The parties would be referred according to their status in this revision petition.

The case of Om Parkash,respondent in the ejectment petition was that he was Non resident Indian (in short NRI) in Canada. He has decided to settle in India. He had rented out the demised residential premises to Sat Pal petitioner vide rent note dated 29.4.1981 and the rent was paid to him regularly. He required the demised premises situated at Khanna for his personal use and occupation. His son Naresh Kumar would also stay with him at Khanna. Although the petitioner has constructed his own Kothi but he has not vacated the demised premises. The respondent has no other residential accommodation within the municipal limits of Khanna nor he has vacated any such premises in Khanna after the coming into force of the Rent Act. Earlier also, he had filed an ejectment petition on the same ground under the ordinary law of Rent Act which was pending.

Hence,the ejectment petition.

The petitioner filed reply and contested the case. Preliminary objections regarding non maintainability, estoppel and

mala fide intention etc. were pleaded. It was also pleaded that the ejectment petition was barred under the provisions of Order 2 Rule 2 CPC as Rent Application No.18 of 20.3.1997 and Rent Application No.5 of 26.2.2001 filed by the respondent were still pending in the Court. The respondent is barred from filing a fresh ejectment petition. On merits, it was denied if the respondent was NRI. However, he is not entitled to seek ejectment of the petitioner on that ground. The respondent owns residential Kothi and commercial buildings in Delhi and his son Naresh Kumar is also carrying on business at Delhi. Another son of the respondent Shri Varjesh Kumar Aggarwal is permanently settled at Singapore and has flourishing business there. Relationship of landlord and tenant and the execution of rent note was admitted. It was denied if Naresh Kumar would stay at Khanna or the respondent wants to spend the evening of his life at Khanna. It was admitted that the family members of the petitioner have constructed a new house where they are residing but the petitioner and his wife are residing in the tenanted premises. Hence, dismissal of the ejectment petition was prayed.

Issues were framed.

The respondent examined himself as AW1. He proved documents Exhibits A-1 to A-37 to prove that he was NRI. Anil Kumar Duggal was examined as AW-2. Garesh Arora was examined as AW-3 while Vivek Gupta, an official of the State Bank of India,South-II,

Extension, New Delhi was examined as AW-4 with the Bank record.

On the other hand, Sat Pal appeared as RW-1 in support of his version and proved certain documents.

In the other ejectment petition relating to non-residential building i.e. shop, it was pleaded by the respondent that he was NRI and that he has decided to settle in India. It was rented out to the respondent. He intends to run the business of Electronics and his son Varjesh Kumar Aggarwal living in Singapore is a skilled hand in this field. He would be assisted in his business by his son Naresh Kumar living in Delhi who would also shift to Khanna. It was pleaded that he has got two godowns in rear and interior side of Rama Mandi but these are not fit for use as a place for running the business of Electronics. It was also pleaded that the respondent does not own any other shop in the area of Municipal Council, Khanna nor he has vacated any such shop after coming into force of the Rent Act. Therefore, the demised premises are required by him for his own bona fide necessity. The ejectment of the petitioner was sought under Section 13-B of the Rent Act.

Again besides pleading legal objections as narrated above, it was denied if the respondent was NRI or if he required the premises for his bona fide necessity or if he would settle in Khanna or his son would shift from Delhi to Khanna or if his son Varjesh Kumar Aggarwal is skilled in the filed of Electronics. In the net analysis,

dismissal of ejectment petition was prayed.

Issues were framed.

Again the respondent appeared as AW-1 and proved certain documents to prove his status as NRI. He also examined Anil Kumar Duggal as AW-2 and Garesh Arora as AW-3.

On the other hand, Sat Pal respondent appeared as RW-1 and Rashad was examined as RW-2. Some documents were also proved by the respondent.

The learned Rent Controller after considering the evidence accepted the petition for ejectment of the petitioner from the residential building vide order dated 11.11.2002 against which Civil Revision No.6024 of 2002 has been filed by the petitioner. The ejectment of petitioner was also ordered from non residential premises vide impugned order dated 11.11.2002 against which Civil Revision No.6025 of 2002 has been filed by the petitioner. Both are being decided by this common judgment.

The first submission of learned counsel for the petitioner was that the respondent had been filing ejectment petitions against the petitioner frequently. Some of the petitions are pending. The ejectment petitions are filed with mala fide intention and with a motive to increase the rate of rent and to harass the petitioner. These ejectment petitions are also barred under the provisions of Order 2 Rule 2 CPC.

This submission has been considered.

It may be noticed that earlier ejectment petitions were filed by the respondent under the ordinary law of ejectment i.e. under Section 13 of the Rent Act. It is not the case of the petitioner if the respondent had filed any ejectment petition under the new provisions of Section 13-B of the Rent Act prior to the filing of the present ejectment petitions. These ejectment petitions have been instituted under Section 13-B in November, 2001 i.e. within few months after the new provisions were incorporated in the statute by Punjab Act No.9 of 2001 dated 31.5.2001. This is a newly added provision for providing immediate remedy to the NRI to get vacated their residential or non-residential buildings from their tenants for their own use. The Hon'ble Supreme Court was pleased to notice the Statement of Object and Reasons of introduction of the new provisions, in the judgment reported as **Baldev Singh Bajwa v.Monish Saini,** 2005(12) Judgments Today 442, as under:-

> "The State Government had been receiving representations from various NRI individuals and through their associations highlighting the plight of Indian residents returning to India after long years abroad. It was represented that the NRIS having spent long years of their life abroad did not find conditions congenial in their own country on their return either to settle down or to take up any business. On account of rigid legal provisions of

existing rent laws, the NRIS were unable to recover possession of their own residential building from the tenants. Government having considered the situation had decided that the existing Rent Legislation viz. East Punjab Urban Rent Restriction Act 1949 should be amended to provide relief to NRIs to enable them to recover possession of a residential or scheduled building and/or one non residential building for their own use."

The respondent cannot be stopped from availing the remedy made available by the newly added provision merely because of the decision of earlier ejectment petitions or because of the pendency of ejectment petitions filed earlier under the ordinary law of ejectment. The petitioner can defeat the respondent only by proving that the case does not fall within the parameters of Section 13-B of the Rent Act. It would be fair and proper to reproduce the relevant provision contained in Section 13-B of the Rent Act. It reads as under:-

"13-B Right to recover immediate possession of residential building or scheduled building and/or non-residential building to accrue to Non-resident Indian.

(1) Where an owner is a Non-Resident Indian and returns to India and the residential building or scheduled building and/or non-residential building,as the case may be,let out by him or her, is required for his or her use, or for the use

of any one ordinarily living with and dependent on him or her,he or she, may apply to the Controller for immediate possession of such building or buildings, as the case may be:

Provided that a right to apply in respect of such a building under this section, shall be available only after a period of five years from the date of becoming the owner of such a building and shall be available only once during the life time of such an owner.

(2) Where the owner referred to in sub-section (1) , has let out more than one residential building or scheduled building and/or non-residential building, it shall be open to him or her to make an application under that sub-section in respect of only one residential building or one scheduled building and/or one non-residential building,each chosen by him or her.

(3) Where an owner recovers possession of a building under this section, he or she shall not transfer it through sale or any other means or let it out before the expiry or a period of five years from the date of taking possession of the said building, failing which,the evicted tenant may apply to the Controller for an order directing that he shall be restored the possession of the said building and the

Controller shall make an order accordingly,"

These provisions reveal that the legislature in its wisdom did not want to delay the possession of residential or non-residential buildings required by a Non-resident Indian for his own use or for the use of those who are dependent on him once he returns to India but at the same time the legislature has taken precaution that the NRI does not mis-use the provision and for that purpose, Section 13-B(3) of the Rent Act reproduced above has clearly provided a safeguard for the tenant. It restrains the NRI from transferring the demised premises so got vacated and from further letting out the same for a period of five years from the date he gets its possession. If the NRI transfers the said property or lets it out to somebody else within a period of five years,after getting it vacated then the tenant who has been ejected can apply to the Rent Controller seeking the restoration of possession of that very building got vacated from him. Even Section 19(2-B) has been incorporated along with Section 13-B which is penal in nature. It provides as under:-

"19(2-B) The owner,who is a Non-resident Indian and who having evicted a tenant from a residential building or a scheduled building and/or non-residential building in pursuance of an order made under section 13-B,does not occupy it for a continuous period of three months from the date of such eviction, or lets out the whole or any part of

such building from which the tenant was evicted to any person, other than the tenant in contravention of the provisions of sub-section (3) of section 13-B, shall be punishable with imprisonment for a term, which may extend to six months or with fine which may be extended to one thousand rupees or both".

Keeping in view these stringent provisions, therefore, no NRI would dare to mis-use the provisions of Section 13-B for getting the demised premises vacated from his tenants unless he really needs the same for his own use and for the use of those who were dependent on him.

The Hon'ble Supreme Court was pleased to observe in para No.8 of **Baldev Singh Bajwa's** judgment (supra) as under:-

"The amendment introduced in the Act created a special class of NRI landlords and repose special right to them to recover immediate possession from the tenants occupying their premises provided,such premises were required by them. Section 13B intends to provide immediate possession of the accommodation to the NRI landlord which is in possession of the tenant and if the landlord requires the same for his or her use or for the use of any one ordinarily living with him/her and is dependent on him or her."

Therefore, Section 13-B of the Rent Act is a special

enactment and the ejectment petitions under this provision are not debarred because of the pendency of the ejectment petitions under the ordinary provision of the Rent Act nor these are hit by the provisions of Order 2 Rule 2 C.P.C.

The next submission of learned counsel for the petitioner was that necessary constituents for seeking ejectment have not been pleaded. It was submitted that the respondent was to plead and prove that he was a non resident Indian. He has returned to India and that he is the owner of the demised property for the last five years. These facts have not been pleaded.

This submission has no merit at all. The respondent has pleaded in the ejectment petition that he is non resident Indian and was living in Canada. He has also pleaded that he has decided to settle in India i.e. to return to India. He has also mentioned in the petition that the shop in dispute was rented out by him to the petitioner in the year 1981 vide rent deed dated 29.4.1981. These words also amount to plead that he was the owner of the demised property for the last more than five years. Therefore, no fault can be found in the pleadings.

It was held by this Court that a landlord seeking ejectment of his tenant under the provisions of Section 13-B of the Rent Act has to prove that (i) that he is a Non-resident Indian (ii) that he has returned to India and (iii) that he was the owner of the property for the last five years and after proving these constituents, he would be entitled to get

the demised premises vacated for his personal requirement. The Hon'ble Supreme Court in **Baldev Singh Bajwa's** case (supra) was pleased to observe that besides these three constituents, the landlord has to prove under Section 13-B of the Rent Act that his requirement of the accommodation was genuine.

Now, the question that comes up for determination before this Court is whether all these constituents have been proved by the respondent in the present case. The first requirement is that he should prove that he is a NRI. The word NRI has been defined in Section 2 (dd) of the Rent Act as under:-

> "2(dd) "Non-resident Indian" means a person of Indian origin,who is either permanently or temporarily settled outside India in either case-
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> (a) for or on taking up employment outside India; or
>
> (b) for carrying on a business or vocation outside India; or
>
> © for any other purpose, in such circumstances, as would indicate his intention to stay outside India for a uncertain period."

The words Non-resident Indian came up for consideration before the Hon'ble Supreme Court in **Baldev Singh Bajwa's** case (supra). Their Lordships were pleased to observe as under:-

> "Definition of "Non-Resident Indian" (NRI) under the Act

contemplates that any person who is of an Indian origin,and who has settled either permanently or temporarily outside India for taking up employment; or for carrying on a business or vocation outside India; or for any other purpose in such circumstances as would indicate to stay outside India for an uncertain period, would be a Non-Resident Indian. Thus, to be a NRI, it is sufficient that a person of an Indian origin establishes that he has permanently or temporarily settled outside India for his business or on account of his employment,or for any other purpose which would indicate his intention to stay outside India for an uncertain period. Therefore, any person who has gone out of India and temporarily settled there for the purposes of undertaking certain course or degree of university would not be a NRI because his stay could not be said to be for an uncertain period. A person to be an NRI, first should be of an Indian origin. The phrase" Indian origin" has not been defined in the Act of 1949. The dictionary and in ordinary parlance phrase "origin" refers to person's parentage or ancestry. The person whose parent, grand-parents, or great grand parents were born in India and permanently resided in India would be an NRI for the purposes of the Act of 1949. It is not necessary that the person should be a citizen

of India and shifted to the foreign country or that because he holds foreign passport he would not be NRI."

In the present case, the respondent has led conclusive evidence to prove that he is a Non-resident Indian. He has proved a copy of his passport Exhibit A-1. It reveals that he is a permanent resident of India (New Delhi) and his current address was shown as Canada. He has also proved Exhibit A-2 which is his Indian Immigration Record and Visa. He also proved Exhibit A-4 which is a Statement of Canada Pension Plan Benefit issued by the Candian authorities in favour of the respondent at his Canada address. The respondent has also proved numerous documents Exhibits A-5 to A-37 which clearly reveal that the respondent is an Indian and is residing in Canada.He is holding valid Indian passport and visa of Canada. The document Exhibit A-7 has been issued by the State Bank of India on 1.2.2002 certifying that Om Parkash respondent is a Non-resident Indian having Saving Bank Account along with foreign currency deposits in their Bank. The perusal of these documents leaves no manner of doubt that the respondent is a NRI.

It is really surprising that the petitioner is the real brother of the respondent and knows that the responent is NRI but he has denied it. This rather reflects on the conduct of the petitioner when he dares to deny the facts which were clearly known to him. It also reveals his intention to harass the respondent to the extent to which he can do.

The second thing which the respondent was to prove was that he has returned to India as required by Section 13-B (1) of the Rent Act under which this petition has been filed. The terminology **returns to India** has come up for interpretation before this Court and also before the Hon'ble Supreme Court in **Baldev Singh Bajwa's** case (supra). This Court had held that the expression **returns to India** as used in Section 13-B of the Rent Act would not necessarily mean that he must return permanently or he must file a petition after he **returns to India.** The Hon'ble Supreme Court was also pleased to interpret this expression in **Baldev Singh Bajwa's** case (supra). Repelling the argument raised on behalf of the tenants, the Hon'ble Supreme Court was pleased to observe in the middle of para 21 of the judgment as under:-

> "Submissions of the learned counsel for the appellants is to bring the case within the four corners of Section 2(dd) and 13B of the Act of 1949, it is necessary that NRI has to return to India permanently. We are unable to agree with the interpretation of Section 2(dd) and 13B sought to be placed by the learned counsel. Return to India could not be read as return to India permanently with an intention to settle in India permanently If we read the phrase "return to India" along with the definition of the "NRI" under Section 2(dd) of the Act, it is clear that the special category of

landlords NRI could also be a person who has settled permanently outside India. Thus, permanent resident outside India being NRI can claim ejectment."

Their Lordships were also pleased to observe towards the end of para No.22 as under:-

"We do not find any substance in the submissions made by the learned counsel that the words "return to India' under Section 13B of the Act denotes return to India permanently."

Regarding his return to India it is sufficient to prove if he has come to India even on temporary basis. After all the vacation of the demised premises shall take some time, rather years, at the instance of tenants,as in the present case. It is not necessary that he should return to India permanently before filing the ejectment petition and then remain on rent in somebody else's property before the ejectment order for his property is passed and the property is got vacated. It is sufficient if he has the intention to come back to India with the intention to settle in India and comes to India,may be temporarily.

In the present case, the respondent has clearly deposed that he intends to come back to India. He had decided to settle down in his native place amongst his kith and kin. He has come temporarily and has filed the ejectment petition. He has also appeared as a witness in both the ejectment petitions. His son Naresh Kumar settled in Delhi may

also come and live with him. He will run his business of Electronics. Therefore, the respondent has returned to India within the meaning of Section 13-B of the Rent Act.

Another thing which the respondent was required to prove was that he was the owner of the demised property for the last five years. This has been clearly proved by him by proving that the demised property was rented out by him to the petitioner in the year 1981. However, in the other ejectment petition relating to non-residential building although the year of renting out the same is not pleaded but it is pleaded in para 10 of the ejectment petition that he (respondent) had been requesting the tenant petitioner for the last many years (before filing this ejectment petition) to vacate these premises but to no effect. The terminology used obviously indicates more than 5 years before filing the ejectment petition. The oral unrebutted evidence has also been produced which proves that the suit property is the ancestral property of the respondent. Even the petitioner himself has led some evidence to prove that some ejectment applications were filed by the respondent against the petitioner long earlier. It is, therefore, clearly proved that the respondent was and is the owner of the demised property for the last more than five years before instituting the ejectment proceedings under Section 13-B of the Rent Act.

The Hon'ble Supreme Court was also pleased to observe in **Baldev Singh Bajwa's** case (supra) that a landlord seeking ejectment

under Section 13-B has also to prove that his requirement of accommodation for himself or for his dependents was genuine.

The terminology used in Section 13-B ie. **required for his or her use** came up for determination before the Hon'ble Supreme Court in **Baldev Singh Bajwa's** case (supra). Their Lordships were pleased to observe as under:-

> "The phrase " bona fide requirement" or bona fide need" or "required reasonably in good faith" or "required" , occur in almost all Rent Control Acts with the underline legislative intent which has been considered and demonstrated innumerable times by various High Courts as also by this Court,some of which we would like to refer to. In **Ram Dass v. Ishwar Chander,** it is said that the bona fide need should be genuine and honest,conceived in good faith. It was also indicated that the landlord's desire for possession,however, honest it might otherwise be, has inevitably, a subjective element in it, and that desire, to become a 'requirement' in law have the objective element of a 'need' which can be decided only by taking all the relevant circumstances into consideration so that the protection afforded to a tenant is not rendered illusory or whittled down."

Their Lordships further observed in para No.16 of the

aforesaid judgment as under:-

> “It is needless to say that in the summary proceedings, the tenant's right to contest the application would be restricted to the parameters of Section 13B of the Act. He cannot widen the scope of his defence by relying on any other fact which do not fall within the parameters of Section 13B. The tenant's defence is restricted and cannot go beyond the scope of the provisions of the Act applicable to the NRI landlord. Under Section 13B, the landlord is entitled for eviction if he requires the suit accommodation for his or her use or the use of the dependant, ordinarily living with him or her. The requirement would necessarily to be genuine or bona fide requirement and it cannot be said that although the requirement is not genuine or bona fide, he would be entitled to the ejectment of the tenant nor it can be said that in no circumstances the tenant will not be allowed to prove that the requirement of the landlord is not genuine or bona fide. A tenant's right to defend the claim of the landlord under Section 13B for ejectment would arise if the tenant could be able to show that the landlord in the proceedings is not NRI landlord;that he is not the owner thereof or that his ownership is not for the required period of five years before the institution of proceedings and that the landlord's

requirement is not bonafide.

In the present case, Om Parkash respondent has clearly proved that he intends to settle down in Khanna and to live amongst his kith and kin in the evening of his life. He has no other house in the municipal limits of Khanna nor he has vacated any such premises.

So far as shop is concerned, he has proved that he intends to run the business in the shop in dispute. His son Naresh Kumar settled at Delhi also intends to shift to Khanna. They will run the business under the guidance of Varjesh Kumar Aggarwal son of the respondent who is living in Singapore and has expertise in the field of Electronics.

It was submitted by the learned counsel for the petitioner that Naresh Kumar is settled at Delhi and so also Varjesh Kumar Aggarwal in Singapore. Therefore, neither Naresh Kumar would shift to Khanna nor Varjesh Kumar Aggarwal would be able to render any guidance to the respondent for running the business.

These submissions are based on surmises and conjectures raised by the petitioner. If Naresh Kumar has a house at Delhi, it does not mean that he cannot shift to Khanna. Even if they do not shift, at least the respondent intends to run the business of Electronics in the shop in dispute. Nothing has come on the file to dis-believe the respondent.

It was submitted by the learned counsel for the petitioner

that the respondent has two other properties and, therefore, ejectment petition regarding the shop in dispute has not been filed by him with bona fide intention.

This submission has no force at all. It is specifically pleaded by the respondent in the ejectment petition that he is owner in possession of two more godowns but these are in the rear and interior side of Rama Mandi and are not fit for use as a place for starting Electronics business and for associate office. These godowns can be used either as a store or as a warehouse but are not proper for running the shop of Electronics. The respondent has not concealed any material. Therefore, availability of two godowns with the respondent does not dis-prove his necessity or need or requirement to possess the shop in dispute to run the business of Electronics there. Therefore, the godowns available with him are not a proper place for running the shop of Electronics. Therefore, the non residential building is also required by the respondent for running his business and his requirement has been proved to be genuine. It has not been dis-proved by the petitioner.

The Hon'ble Supreme Court was pleased to observe in **Baldev Singh Bajwa's** case (supra) that there are sufficient safeguards in these provisions to ensure that the NRI landlord does not get the residential or non-residential building etc.vacated when he does not need the same. It was held as under:-

“Virtually conditions and restrictions imposed on the NRI

landlord makes it improbable for any NRI landlord to approach the court for ejectment of a tenant unless his need is bona fide. No unscrupulous landlord probably, under this Section, would approach the court for ejectment of the tenant considering the onerous conditions imposed on him by which practically he is deprived of his right in the property not only as a lessor but also as the owner of the property. There is a restriction imposed even on the transfer of the property by sale or any other manner. The restriction imposed on the landlord by all probability points to the genuine requirement of the landlord. In our view, there are inbuilt protections in the relevant provisions, for the tenants that whenever the landlord would approach the court he would approach when his need is genuine and bona fide. It is, of-course, subject to tenants' right to rebut it but with strong and cogent evidence. In our view, the proceeding taken up under Section 13B by the NRI landlords for the ejectment of the tenant, the court shall presume that landlord's need pleaded in the petition is genuine and bona fide. But this would not disentitle the tenant from proving that in fact and in law the requirement of the landlord is not genuine. A heavy burden would lie on the tenant to prove that the requirement of the landlord is not genuine. To

prove this fact the tenant will be called upon to give all the necessary facts and particulars supported by documentary evidence, if available, to support his plea in the affidavit itself so that the Controller will be in a position to adjudicate and decide the question of genuine or bona fide requirement of the landlord. A mere assertion on the part of the tenant would not be sufficient to rebut the strong presumption in the landlord's favour that his requirement of occupation of the premises is real and genuine."

In the present case, therefore, the respondent has clearly proved that he is Non-resident Indian, that he has returned to India within the meaning of Section 13-B of the Rent Act and that he was and is owner of the demised premises for the last more than five years before the institution of the present ejectment proceedings and that he needs both residential building as well as non residential building for his personal use and his need or requirement is genuine. Therefore, the respondent having succeeded in proving all the four necessary requisites as laid down in **Baldev Singh Bajwa's** case (supra), he is entitled to the vacant possession of both these properties.

Before parting with this judgment, it may be observed that the petitioner is the real brother of the respondent. He has controverted even those facts which, to his knowledge, were correct. He has tried to defeat the legislative intent incorporated in Section 13-B of the Rent

Act with a mala fide intention to delay his possession over the suit property and has resorted to revisional jurisdiction with a view to defeat the right of the respondent. After perusing the relevant provisions of the Rent Act, the Hon'ble Supreme Court was pleased to observe towards the end of para 9 of the judgment in **Baldev Singh Bajwa's** case (supra) as under:-

> “These provisions indicate that in order to obtain leave to contest the application of the landlord, the tenant has to file an affidavit taking the grounds on which he wants to contest that application. If the affidvit filed by the tenant discloses such as would disentitle the NRI-landlord from obtaining an order for the recovery of immediate possession, the Controller would grant leave to the tenant to contest landlord's application for eviction. Once the leave is granted, the application is required to be disposed of as per the procedure applicable to the Court of Small Causes. The Controller is required to commence the hearing within one month from the date on which the leave is granted to the tenant to contest. The application shall be heard day-to-day till hearing is concluded and application decided. The order to direct recovery of possession of the suit acommodation made by the Controller is not subject to appeal or the second appeal. However, the High Court may call for the

record of the case to satisfy itself that the orer passed by the Controller is in accordance with law and may pass such orders as it thinks fit."

It is, therefore, clearly revealed that the impugned order dated 11.11.2002 passed by the learned Rent Controller was not appealable but the petitioner by mis-using the process of law has delayed the delivery of possession of vacant premises to the respondent for a period of four years after the passing of ejectment order dated 11.11.2002.

In view of the facts of this case and the law discussed above, both these revision petitions are dismissed with costs of Rs.10,000/- each and the impugned orders 11.11.2002 in both the cases are upheld. The petitioner is directed to hand over the vacant possession of the residential property as well as non-residential building to the respondent landlord within a period of one month .

December 8 ,2006. (S. N. Aggarwal)
Jaggi Judge